

ISSUES

On November 20, 2013, the parties settled this claim for an October 2, 2012, accident. Special Administrative Law Judge (SALJ) John Nodgaard approved attorney fees for Mr. Malone in the amount of \$4,375, or 25% of the \$17,500 lump sum settlement.

The parties agree a child support lien requires that 40% of the settlement amount be paid toward the child support. The settlement hearing transcript and attachments do not mention the March 11, 2013, Order for Involuntary Assignment of Compensation entered in the District Court of Seward County, Kansas. In his brief, claimant asserted respondent remembered the child support lien subsequent to the settlement hearing, and after withholding \$7,000 for the 40% child support lien, sent claimant's attorney a check for \$10,500. Claimant's attorney then deducted \$4,375 from the \$10,500, leaving claimant \$6,125. Had the \$4,375 been deducted from the gross settlement of \$17,500, claimant would net \$7,875.

ALJ Fuller stated in the March 6, 2014, Order:

Claimant's counsel, Mr. Terry J. Malone, filed a Motion To Enforce Attorney Fee Lien. The parties are in agreement that Mr. Malone is entitled to 25% of the proceeds of the settlement. The settlement was for \$17,500.00 full and final and Mr. Malone is entitled to \$4,375.00. The parties further agreed that the child support lien in effect, required that 40% of such settlement be paid toward that Involuntary Assignment. The only question is whether Mr. Malone is entitled to 25% of the 40% withheld for child support or whether his entire 25% of the total settlement is to be withheld from the proceeds the claimant is receiving.

K.S.A. 44-514(b)(1)(B)(ii) relevant portion states: "Past due support shall be collectible from lump-sum settlements, judgments or awards but shall not exceed 40% of a lump sum...." There is nothing authorizing the withholding of any attorney fees. Nothing was presented by way of argument or case law to show that the statute should be interpreted in any other fashion. Therefore, claimant's counsel is entitled to his 25% of the settlement amount of \$17,500.00 which he can withhold from the settlement amount paid to the claimant.

Claimant contends the attorney fee lien of \$4,375 should have been subtracted from the lump sum settlement proceeds before the 40% child support lien was withheld. Claimant requests respondent be ordered to pay \$1,750 for attorney fees that claimant alleges should have been withheld from the 40% child support lien.

Respondent asserts it was not obligated to withhold 25% of the amount of the child support lien for claimant's attorney fees because there is no statutory authority or case law requiring respondent to do so and there was no contract between claimant's attorney and the State of Kansas approved by the Director pursuant to K.S.A. 44-536(b).

The issue before the Board on this appeal is: should 25% of the amount of the child support lien against claimant's workers compensation settlement have been withheld for claimant's attorney fees?

FINDINGS OF FACT

After reviewing the record and considering the parties' arguments, the Board finds the pertinent facts are adequately set forth above and in the ALJ's March 6, 2014, Order.

PRINCIPLES OF LAW AND ANALYSIS

K.S.A. 2012 Supp. 44-514(b) states, in part:

Claims for compensation, or compensation agreed upon, adjudged or paid, which are paid to a worker on a weekly basis or by lump sum shall be subject to enforcement of an order for support by means of voluntary or involuntary assignment of a portion of the compensation.

(1) Any involuntary assignment shall be obtained by motion filed within the case which is the basis of the existing order of support.

(A) Any motion seeking an involuntary assignment of compensation shall be served on the claimant and the claimant's counsel to the workers compensation claim, if known, the motion shall set forth:

- (i) The amount of the current support order to be enforced;
- (ii) the amount of any arrearage alleged to be owed under the support order;
- (iii) the identity of the payer of the compensation to the claimant, if known; and
- (iv) whether the assignment requested seeks to attach compensation for current support or arrearages or both.

(B) Motions for involuntary assignments of compensation shall be granted. The relief granted for:

- (i) Current support shall be collectible from benefits paid on a weekly basis but shall not exceed 25% of the worker's gross weekly compensation excluding any medical compensation and rehabilitation costs paid directly to providers.
- (ii) Past due support shall be collectible from lump-sum settlements, judgments or awards but shall not exceed 40% of a lump sum, excluding any medical compensation and rehabilitation costs paid directly to providers.

K.S.A. 2012 Supp. 44-536 states in part:

(a) With respect to any and all proceedings in connection with any initial or original claim for compensation, no claim of any attorney for services rendered in connection with the securing of compensation for an employee or the employee's dependents, whether secured by agreement, order, award or a judgment in any court shall exceed a reasonable amount for such services or 25% of the amount of compensation recovered and paid, whichever is less, in addition to actual expenses incurred, and subject to the other provisions of this section. . . .

. . .

(f) All attorney fees for representation of an employee or the employee's dependents shall be only recoverable from compensation actually paid to such employee or dependents, except as specifically provided otherwise in subsection (g)¹ and (h).

. . .

(h) Any and all disputes regarding attorney fees, whether such disputes relate to which of one or more attorneys represents the claimant or claimants or is entitled to the attorney fees, or a division of attorney fees where the claimant or claimants are or have been represented by more than one attorney, or any other disputes concerning attorney fees or contracts for attorney fees, shall be heard and determined by the administrative law judge, after reasonable notice to all interested parties and attorneys.

Claimant asserts the attorney fee lien set forth in K.S.A. 2012 Supp. 44-536 has priority over the child support lien created in K.S.A. 2012 Supp. 44-514(b)(1)(B)(ii). Claimant then rationalizes that because the attorney fee lien has priority, claimant's attorney fees of \$4,375 should have been deducted from the gross \$17,500 settlement and not from the \$10,500 remaining after the child support lien was deducted. The Board finds no statutory authority or case law that supports claimant's contention that an attorney fee lien has priority over a child support lien in workers compensation claims.

K.S.A. 2012 Supp. 44-536(a) provides that attorney fees in a workers compensation claim may not exceed a reasonable amount for services rendered or 25% of the amount of compensation recovered and paid, whichever is less. Claimant recovered \$17,500, not \$10,500. K.S.A. 2012 Supp. 44-514 authorizes up to 40% of a workers compensation award to be withheld for past due child support owed by a claimant. That statute contains no provision providing that attorney fees shall be deducted from the portion withheld for past due child support. Deducting attorney fees from the amount withheld for the past due

¹ K.S.A. 2012 Supp. 44-536(g) awards attorney fees in certain proceedings, such as review and modification, post-award medical and penalties, and is inapplicable to this matter.

child support obligation would have the effect of reducing the amount withheld for child support from 40% to a lesser percentage. The plain language of the foregoing statutes convinces the Board to affirm the ALJ's Order.

The Board notes that neither claimant nor his attorney was harmed because of the manner that claimant's attorney fees were withheld from the settlement. Claimant's attorney received the \$4,375 to which he was entitled under his attorney fee contract. That, by itself, renders this matter moot. Claimant received the balance of the settlement. Admittedly, had claimant's attorney fees been deducted from the \$17,500 settlement, before the child support lien was paid, claimant would receive another \$1,750 to do with as he pleased, instead of being applied to his child support obligation. However, claimant received the benefit of the \$1,750, as it paid a child support obligation that he legally owed.

The Board understands claimant's consternation that he thought he was going to receive 75% of the \$17,500 settlement, only to learn after the settlement hearing that 40% of the settlement was going to be deducted for child support and all attorney fees would be deducted from the remaining 60%. However, if the Board required respondent to pay claimant an additional \$1,750, the Board would be modifying the settlement agreement and increasing claimant's compensation from \$17,500 to \$19,250.

CONCLUSION

The Board affirms the ALJ's March 6, 2014, Order.

As required by the Workers Compensation Act, all five members of the Board have considered the evidence and issues presented in this appeal.² Accordingly, the findings and conclusions set forth above reflect the majority's decision and the signatures below attest that this decision is that of the majority.

WHEREFORE, the Board affirms the March 6, 2014, Order entered by ALJ Fuller.

IT IS SO ORDERED.

² K.S.A. 2013 Supp. 44-555c(j).

Dated this ____ day of July, 2014.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

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Honorable Pamela J. Fuller, Administrative Law Judge